

Application No. 10/826,096

Response to Office Action Mailed 09/20/2005

## REMARKS

**Claim Rejections - 35 USC §103**

The Office Action rejected Claims 1-3, 6, and 8 under 35 U.S.C. 103(a) as being unpatentable over Dantolan (US Pat. No. 5,474,511) in view of Buchner (US Pat. No. 3,761,083). The Office Action states on Page 2 that Dantolan (511) does not disclose stationary handles or shock absorbing means on each end of the tube. Actually, the embodiment shown in FIG. 1 and discussed in Col 2, lines 4-23 has fixed handles and flanges attached to the fixed handles. The flanges protect a user's hands from being entwined in a coil and crushed by the weight. However, the flanges would not absorb shocks but would rather transmit them. Therefore, the flanges would not prevent a shock from excessive momentum to cause a user from losing his grip on a handle. Then the uncontrolled exercise device becomes a thing of danger that might cause injury to the user or damage to property. Buchner's device has both stationary and slidable handles, as does the instant invention, but it does not have shock absorbing means. Therefore, users of Buchner's device are subject to the same risks of harm as user of Dantolan (511)'s device.

The *Manual of Patent Examining Procedures* (MPEP), paragraph 2143.03 page 2100-133 (Rev. 2 May 2004) provides that to establish *prima facie* obviousness of a claimed invention all the claim limitations must be taught or suggested by the prior art. The combination of Dantolan (511) and Buchner do not teach all the limitations of Claim 1 of the instant application. That combination lacks "A first shock absorbing means deployed on the tube adjacent to the first stationary handle and a second shock absorbing means deployed on the tube adjacent to the second stationary handle." Since the prior art relied upon by the examiner does not teach all the limitations in Claim 1, the absent limitation has to be suggested by the knowledge of one with ordinary skills in the art, as discussed in MPEP 2143.01 page 2100-130 (Rev. 2 May 2004). The Office Action, on page 3, presumes that "it would have been obvious to one with ordinary skills in the art at the time the invention was made to have utilized shock absorbing means with the Dantolan (511) device so as to lessen the impact on a user's hands, thereby preventing

Application No. 10/826,096

Response to Office Action Mailed 09/20/2005

injury and discomfort, making the device safer and more enjoyable to use.”

Applicant respectfully disagrees that the prior art suggests that shock absorbing means would be within the knowledge of one with ordinary skills in the art of reciprocating exercise devices. Buchner's patent was filed in 1970 and the Dantolan (511) patent was filed twenty-three years later. Dantolan was concerned about protecting a user's hands from injury and discomfort and hence provided flanges as discussed above. However, Dantolan's (511) device did not have shock absorbing means. Breens exercise apparatus (U.S. Patent No. 5,755,644) and Wilkinson's exercise pole (U.S. Patent No. 5,628,713), both cited by the examiner, have shock absorbing means. But these devices have an end that contacts the ground primarily. It is well known that contacting the ground sharply with a pole-like device can be jarring and therefore obvious to have shock-absorbing means. However, this device is not intended to have jarring contact with the ground but rather to be devices of this type, such as Dantolan's bar bell (U.S. Patent No 2,528,213) filed in 1946 through Buchner and Dantolan (511) do not have shock absorbing means. Therefore, we contend that shock absorbing means are not obvious for reciprocating exercise devices, as these inventors who can be considered to have ordinary skills in the art of reciprocating exercise devices did not employ shock absorbing devices. Hence, the rejection of Claim 1 is believed to be traversed.

MPEP, 2143.03, page 2100-133 (Rev. 2, May 2004) provides that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim dependent therefrom is nonobvious. Rejected Claims 2-3, 6, and 8 are directly or indirectly dependent on Claim 1. Therefore, Applicant believes that the rejection of Claims 2-3, 6, and 8 are also traversed as these claims are dependent on Claim 1 and the rejection of Claim 1 is believed to be traversed.

#### **Allowable Subject Matter**

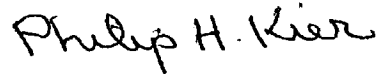
Claims 4, 5, 7, and 9 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Claim 4 has been

Application No. 10/826,096

Response to Office Action Mailed 09/20/2005

canceled and by new, independent Claim 10, which has all of the limitations of Claims 1-4. Also Claim 5 has been amended to depend on Claim 10 instead of canceled Claim 5.

Respectfully submitted,



Philip H. Kier

Registration No. 28,866